(30) (1)

WP 8791/03

BEFORE THE M.P. STATE ADMINISTRATIVE TRIBUNAL : JABALPUR

O.A. NO. (637) OF 1994
(O.A.No. 910/05)

APPLICANT :- M.Murlidhar Patnaik

VERSUS

RESPONDENTS :- State of Madhya Pradesh and others.

DETAILS OF APPLICATION :-

1. Particulars of the applicant :-

(i) Name of the applicant : M.Murlidhar Patnaik

(ii) Name of Father : M.R.Patnaik;

(iii) Age of the applicant : 38 years

(iv) Designation and particulars of office (Name and station) in which employed or/ was last employed before ceasing to be in service:- Ex-L.D.C. Office of the Joint Director Public Instructions Raipur Division, Raipur, M.P.

(v) Office address :- As above.

(vi) Address for service of notice:-

Devendranagar, Sector-3,
House No.110, Raipur, Raipur, M.P.

3. ~~Particulars of the order against which application is made. The application is against the following order~~

2. PARTICULARS OF THE RESPONDENT:-

(i) to (vi) :- 1. State of M.P. Through the Chief Secretary Vallabh Bhawan Bhopal, M.P.

2. Commissioner, Raipur Division Raipur, M.P.

3. Joint Director Public Instructions Raipur Division Raipur, M.P.

3. PARTICULARS OF THE ORDER AGAINST WHICH APPLICATION IS MADE. THE APPLICATION IS AGAINST THE FOLLOWING ORDER:-

with reference to Annexure

(i) Order No. : Stha.2/ LDC/Vik./Niyu./93-94/ 144 Dt. 18.1.94.

(ii) : Dt. 18.1.94

(iii) Passed by : Joint Director Public Instructions Raipur, Division Raipur, (Respondent No.3)

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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (S.) NO.910 OF 2005

Petitioner	:	M. Murlidhar Patnaik
	versus	
Respondents	:	State of Madhya Pradesh and others

Present : Mr. H.B.Agrawal, Senior Advocate with Mr. Manish Agrawal, counsel for the petitioner.
Mrs. Anju Ahuja, Deputy Government Advocate for the respondents/State.

ORDER
(Passed on 24th of August, 2006)

Learned counsel appearing for the petitioner submits that the petitioner was appointed through proper selection process on the post of Lower Division Clerk. The petitioner duly submitted his disability certificate of blindness. The selection committee, after having examined the certificate dated 23-3-1990 (Annexure-A1), appointed him on the post of Lower Division Clerk and the petitioner was assigned the job of Telephone Operator with effect

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from the date when the petitioner joined the office, i.e., 20-8-1993 (Annexure-A4). The appointment order dated 2-8-1993 (Annexure-A3) prescribed that the selected candidates would be examined for verification of their residence, character by the police and for verification of the medical certificate by the Chief Medical Officer, by the employer separately. On enquiry, the medical board, vide Annexure-A6 dated 19-11-1993, reported that the petitioner was found 100% blind as per the original certificate submitted by him at the time of selection. The medical certificate dated 23-3-1990 (Annexure-A1) was accordingly found correct. Hence, this is not a case where services of the petitioner could be terminated on the ground that the medical certificate filed by the petitioner was not genuine or was forged. It appears on perusal of Annexure-A5, a certificate issued by Joint Director, Public Instructions, Raipur, Division Raipur, that the petitioner was assigned the work of Telephone Operator from the beginning since the date the petitioner joined on 20-8-1993 and he had been working satisfactorily.

2. The order of termination dated 18-1-1994 (Annexure-A7) was passed without issuing show cause notice or affording an opportunity of hearing to the petitioner on the ground that the petitioner was unfit for Lower Division Clerk. The termination order dated 18-1-1994 (Annexure-A7) is not in accordance with the terms and conditions of the appointment and as such the same is

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vitiated on account of the fact that the petitioner while facing the interview was directed to produce the disability certificate. The petitioner has produced disability certificate of blindness dated 23-3-1990 (Annexure-A1). It is, therefore, apparent that it was in the knowledge of the officers who were in the selection committee and who had selected the petitioner for the post. The terms and conditions of the appointment are to verify the genuineness of the certificate not for any other purpose. The medical certificate issued by District Medical Board on 19-11-1993 (Annxure-A6) did not find any perversity in the medical certificate submitted by the petitioner dated 23-3-1990 (Annexure-A1). The respondents ought not to have taken the plea that in the medical board the petitioner was found unfit which was a known condition before the selection committee and the petitioner was selected in accordance with law for appointment to the post of Lower Division Clerk. In the event the petitioner is not in a position to perform table work, the petitioner ought to have been given any other work as was done after joining of service. The petitioner was assigned the work of Telephone Operator and he was found successful as per the certificate Annexure-A5.

3. Learned counsel for the petitioner further contends that the petitioner was denied salary for the period of five months when

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he had regularly and sincerely worked on the post of Lower Division Clerk as Telephone Operator.

4. The State Counsel relies on the terms and conditions of the appointment order, which provides for non-payment of salary in the event the residence certificate, medical certificate produced by the candidate are found forged or not true. The contention of the State Counsel is rejected as the same is contrary to the terms and conditions of the appointment.

5. The State Government by Circular No.F.9-1/39/1/AA.PR. dated 9-7-1991 has provided reservation of 1% seat in appointment of Class III and IV Employees with 10 years relaxation in age. Thereafter, by Circular No.F8-1/97/AA.PR./1 dated 1-8-1997, the reservation of disabled persons was increased to 6%. In the present case, the petitioner was selected under special recruitment drive for appointment of disabled persons (Annexure-A2). The medical certificate of the petitioner of blindness was not found incorrect or forged. Accordingly, the petitioner is entitled to payment of salary for the period he had worked in the office.

6. The petition is accordingly allowed to the above extent and the respondents are directed to reinstate the petitioner in service granting notional seniority for fixing the pay-scale and other

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benefits. In the facts of the case, the parties shall bear their own costs.

Certified copy as per rules.

Sd/-
Satish K. Agnihotri
Judge

Gopal